

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:17-cv-00534-H

EPIC GAMES, INC.,

Plaintiffs,

v.

C.R.,

Defendant.

**PLAINTIFF'S RENEWED MOTION FOR
ENTRY OF DEFAULT**

Pursuant to Fed. R. Civ. P. 55(a), Plaintiff Epic Games, Inc. ("Epic" or "Plaintiff") renews its motion for entry of default against C.R. ("Defendant" or "C.R.") and requests that the Clerk enter a default against Defendant because Defendant has failed to plead or otherwise defend as required under the rules and the Court's July 12, 2018 Order. In support of this Motion, Plaintiff states as follows:

1. Epic filed the above-captioned case on October 23, 2017 seeking injunctive relief and damages against the Defendant for (i) copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*; (ii) contributory copyright infringement in violation of the Copyright Act, §§ 106 and 501, *et seq.*; (iii) breach of contract in violation of North Carolina law; and (iv) intentional interference with contractual relations in violation of North Carolina law. (Comp. [DE 1] at ¶ 1.)

2. As described in Epic's Declaration of Service, which Epic incorporates by reference as if fully set forth herein, Epic encountered certain obstacles in its diligent, good faith attempts to effect service of process on the Defendant, but was eventually able to properly effect

service on him and his mother on January 18, 2018. (Decl. of Serv. [DE 10] at ¶¶ 2-18; *id.* at Exh. A-C.)

3. Defendant never responded to the complaint. Due this failure, Epic moved for entry of default on February 13, 2018. [DE 11].

4. On April 3, 2018, the Court denied Epic's motion without prejudice after construing *ex parte* correspondence in the form of a letter to the Court from Defendant's mother as a Motion to Dismiss. (*See* Order [DE 13] & Motion [DE 14].) The Court further ordered Plaintiff to respond to the arguments set out in the letter within 21 days of the Order. (*See* [DE 13 at 2.]

5. Epic filed its response to the motion on April 23, 2018. (*See id.* [DE 20].)

6. On July 12, 2018, the Court entered an order denying the letter construed as a motion to dismiss, ordered Defendant to answer Epic's complaint within 14 days from receiving notice of the denial, and "[i]n an abundance of caution," directed the clerk to serve the order on Defendant, through his mother, at two different addresses. (*See id.* [DE 22].)

7. Moreover, Fed. R. Civ. P. 12(a)(4)(A) provides that "if the court denies [a motion to dismiss], the responsive pleading must be served within 14 days after notice of the court's action. *Id.*

8. The Clerk's office has confirmed to the undersigned counsel that the Court's July 12, 2018 Order was served the same day it was entered-- July 12, 2018.

9. Under Rule Fed. R. Civ. P. 6(d), "[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire . . ." *Id.*

10. Thus, under the foregoing rules and court orders, the deadline for Defendant to file his responsive pleading was July 30, 2018. That deadline has passed without any such

pleading having been either filed or served. Accordingly, Defendant is in default, and default should be entered against Defendant by the Clerk under Fed. R. Civ. P. 55(a).

Respectfully submitted, this the 9th day of July, 2018.

PARKER POE ADAMS & BERNSTEIN LLP

/s/Christopher M. Thomas

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Attorney for Plaintiff Epic Games, Inc.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **PLAINTIFF'S RENEWED MOTION FOR ENTRY OF DEFAULT** was electronically filed this day with the Clerk of Court using the CM/ECF system and that a true and accurate copy of it was sent to all parties to this cause by depositing the original and/or copy hereof, postage pre-paid, in the United States mail, addressed as follows:

C.R.
c/o Lauren Rogers
501 West Ave.
New Castle, DE 19720

and

C.R.
c/o Lauren Rogers
5 Vireo Circle
Newark, DE 19711

This the 9th day of July, 2018.

PARKER POE ADAMS & BERNSTEIN LLP

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